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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,	)	Case No. 07-cv-02132-DMS-AJB
	)	
Plaintiff,	)	Judge: Dana M. Sabraw
	)	Mag. Judge: Anthony J. Battaglia
-against-	)	
	)	<b>DEFENDANT'S REPLY</b>
NATIONWIDE RECOVERY SYSTEMS, LTD.,	)	<b>MEMORANDUM IN</b>
	)	<b>RESPONSE TO PLAINTIFF'S</b>
Defendant.	)	<b>PARTIAL OPPOSITION</b>
	)	<b>TO DEFENDANT'S MOTION</b>
	)	<b>FOR CONSOLIDATION OF</b>
	)	<b>ACTIONS</b>
	)	
	)	Date: February 8, 2008
	)	Time: 1:30 P.M.
	)	Courtroom: 10

Defendant, Nationwide Recovery Systems, Ltd. ("NRS"), submits this reply memorandum in response to the partial opposition filed by plaintiff, James M. Kinder, in response to NRS's Motion for Consolidation of Actions. NRS respectfully shows:

1           1.       With one exception, plaintiff does *not* oppose consolidation of the related  
2 actions. Like NRS, plaintiff requests that all of the related actions be consolidated, except for  
3 *James M. Kinder v. Bankfirst*, Case No. 07cv877 DMS(POR). Plaintiff alleges that he and the  
4 defendant in the *Bankfirst* case “have expended considerable attorney time and resources into  
5 the litigation and it should proceed forward as scheduled.” Docket No. 17, at p. 3. NRS  
6 disagrees and requests that all of the cases be consolidated, including the *Bankfirst* case.  
7

8           2.       Undersigned counsel has spoken with defense counsel in the *Bankfirst* case,  
9 who supports the requested consolidation. As plaintiff admits, discovery was just issued in  
10 the *Bankfirst* case and no depositions have been scheduled. Contrary to plaintiff’s  
11 contentions, the *Bankfirst* case is *not* far along.  
12

13           3.       In *James M. Kinder v. Harrah’s Entertainment, Inc.*, Case No. 07cv2226  
14 DMS(AJB), defendant Harrah’s filed an opposition to NRS’s consolidation motion. *See*  
15 Docket No. 25, Case No. 07-2226. Harrah’s contends that its case should not be consolidated  
16 because different facts and claims are present in its lawsuit. *Id.* at pp. 5-8. NRS disagrees.  
17

18           4.       All of the cases relate to telephone calls made to number 619-999-9999 (the  
19 “9s Number”), which plaintiff obtained and had allegedly assigned to his pager. And in all of  
20 the cases, plaintiff alleges the defendant violated the Telephone Consumer Protection Act of  
21 1991 (“TCPA”), 47 U.S.C. § 227 by calling his 9s Number.  
22

23           5.       The fact that the *Harrah’s* lawsuit includes additional claims not included in  
24 the other lawsuits does *not* justify excluding the lawsuit from the consolidation. Indeed, these  
25 “additional claims” are related to the TCPA claims included in all of the lawsuits. The  
26 “additional claims” are merely “piggyback” claims based upon alleged violations of the  
27 TCPA, *e.g.*, plaintiff’s unfair business practice claim is predicated upon an alleged violation  
28

1 of the TCPA. When the TCPA claims are dismissed, these “additional claims” should  
2 likewise be dismissed as a matter of law.

3 6. Consolidation of the related cases under Fed. R. Civ. P. 42(a) is appropriate.  
4 Consolidation of these cases will “avoid the possible inconsistent adjudication of common  
5 factual and legal issues and lessen the time and expense required for all parties.” *In re Cree,*  
6 *Inc., Securities Litigation*, 219 F.R.D. 369, 371 (M.D. N.C. 2003).  
7

8 7. In addition to seeking consolidation of these cases, NRS will seek to stay  
9 discovery in all of the related cases, pending a ruling on plaintiff’s TCPA claims. As noted in  
10 earlier filings, every court which has ruled on plaintiff’s TCPA claims has dismissed the  
11 claims, including this Court in *James M. Kinder v. Associates Housing Finance, LLC, et al.*,  
12 Case No. 99-02411 (S.D. Cal. 1999) (Jones, J.). In light of these rulings, staying discovery in  
13 these cases, to avoid unnecessary costs and expenses, is appropriate.  
14

15 WHEREFORE, The Court should grant NRS’s Motion for Consolidation of Actions  
16 due to the common questions of law and fact involved in the related *Kinder* cases.  
17 Consolidation will promote judicial economy and consistent outcomes in these virtually  
18 identical cases.

19 Dated: January 30, 2008

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.

21 /s/ Debbie P. Kirkpatrick

22 Debbie P. Kirkpatrick

23 Attorney for Defendant,

Nationwide Recovery Systems, Ltd.

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